

STATE OF WISCONSIN

PERSONNEL COMMISSION

RICHARD J. OSTROWSKI,
Appellant,

v.

**Secretary, DEPARTMENT OF
EMPLOYMENT RELATIONS,**
Respondent.

DECISION AND ORDER

Case No. 95-0049-PC

A proposed decision and order (PDO) was mailed to the parties on November 19, 1996. Written objections were filed on behalf of appellant to which respondent filed a reply on January 16, 1997. The Commission considered the arguments of the parties, consulted with the hearing examiner and decided to adopt the PDO as the Commission's final disposition of this case, as supplemented by the following discussion.

This case was combined for hearing with companion appeals filed by Kirby D. Foss (95-0048-PC), Allan Nordstrom (95-0061-PC), Alexander T. J. Olson (95-0062-PC) and Kenneth C. Lane (95-0064-PC). The objections filed by appellants (hereafter referred to as "Appellants' Brief") include arguments pertinent to all cases (pp. 2-6), as well as arguments specific to each appellant. Objections regarding appellant Ostrowski are contained on pp. 8-9 of Appellants' Brief. The objections specific to appellant Ostrowski will be discussed below first, followed by a discussion of the arguments pertinent to all appellants.

Objections Specific to Appellant Ostrowski

The objections filed on behalf of appellant Ostrowski are shown below along with the Commission's response.

Appellant Ostrowski first contends:

The Commission excludes Tasks A4 (recruitment, training and evaluation of employes) and A14 (direct LTEs) from actual law enforcement. Ostrowski Proposed Decision, at 6. Yet the Commission concedes that one of the LTE Rangers supervised by Ostrowski performs a public contact role. Id. . . . [T]his is actual law enforcement work under both DNR policy and the class specs. See App. Exs. 4 and 19; Resp. Ex. 1.

The Commission rejects the above argument. The Class Spec do not include undefined “public contact” duties as actual LE activities. Nor did appellant Ostrowski claim that such public contact by the “public contact” LTE included enforcing or even explaining park rules and regulations. Rather, he claimed entitlement to count A4 and A14 as actual LE activities because he performs background checks before hiring LTEs.

Appellant Ostrowski’s second contention is shown below:

The Commission excludes tasks C2 (maintain trails), C6 (post boundaries), C8 (signage), C9 (vehicles and equipment), and C10 (maintain picnic areas). Ostrowski Proposed Decision, at 7. Again, however, these duties are within both DNR preventative law enforcement policy and the class specs. App. Exs. 4 and 19; Resp. Ex. 1.

The reasons for excluding these tasks are noted on p. 7 of the PDO. Appellant’s above-noted argument attacks the conclusions made in the PDO but does not provide a basis for refuting the reasons given for the conclusions in the PDO.

Appellant Ostrowski’s final contention is noted below:

Finally, all Tasks D1 through D4 relate to public contact work. Contrary to the Commission’s conclusion (Ostrowski proposed Decision, at 7), all such work constitutes actual law enforcement. App. Exs. 4 and 19; Resp. Ex. 1. The class specs specifically include “[e]nforcing law, rules, and regulations. Issuing verbal and written warnings . . . Responding to law enforcement related complaints . . .” Resp. Ex. 1 (emphasis added).

The LE portions of the goal B tasks which involved actual LE activities already were included in other sections of the PD, as noted on p. 7 of the PDO.

Point of Clarification

The time sheet information recited on pp. 8-9 of the PDO pertains to the time codes created and used by the Department of Natural Resources (DNR), appellant’s employing agency, prior to the survey (hereafter, the old time codes); which were changed after the survey (hereafter, the new time codes). The new time codes are

shown on page 9-10 of the PDO. The old time codes are shown in Exh. A-3, but the text is incomplete and neither party had a copy of the complete text. Appellants contend that the new time codes included more tasks as LE work than the old codes and such contention appears to be supported by the portion of the old time codes contained in Exh. A-3.

The credibility note contained in the first full paragraph on page 9 of the PDO, pertains to DNR's new time codes. The point addressed in the credibility note pertains to appellant Olson's contention that the LE work recorded under the new time code would present a more accurate reflection of the LE work performed by his position than reflected under the old time codes or in his PD. This contention is rejected because the new time codes are broadly stated which result in inclusion of tasks which do not meet the Class Spec definition of actual LE activities.

Arguments Relating to All Appellants

The Class Spec definition of Ranger 2 (as shown on page 2 of the PDO) includes positions responsible for performing actual LE activities for at least 60% of the position's time. Actual LE activities is a defined term in the Class Spec as shown below (also shown on p. 2 of the PDO).

For the purpose of classifying positions within this series, actual law enforcement activities are defined as follows:

1. Random patrols on state land and water.
2. Enforcing laws, rules and regulations.
3. Issuing verbal and written warnings and/or citations to visitors to achieve compliance with laws and regulations.
4. Responding to LE related complaints.
5. Directing the activities of permanent and limited term employment LE personnel.
6. Seizing, holding and disposing of evidence for court.
7. Testifying in court.
8. Checking licenses, tags, permits and registrations.
9. Reviewing citations for completeness & accuracy.
10. Developing reports related to LE activities within the park/forest.
11. Conducting investigations of accidents, fires and incidents on state lands.
12. Acting as Court Officer.
13. Monitoring chain of evidence for all items seized and conducting proper disposition of items.
14. Attending and presenting LE training.
15. Serving as a district armorer.
16. Providing LE assistance to LE officers outside of normal park/forest LE duties.
17. Working with Conservation Wardens.

Appellants contend (pp. 2-5, Appellants' Brief) that the examiner's interpretation of the Class Spec "disregards" rules of construction. The relevant portion of appellants' argument (pp. 2-3, Appellants' Brief) is shown below:

The Commission concludes that "the record supports the conclusion that DER intended the narrower definition" of actual law enforcement as compared to that applied by the DNR. See e.g. Nordstrom Proposed Decision, at 11. The Commission also asserts that the DNR's definition of law enforcement is "broader" than the definition of law enforcement in the class specs. *Id.*, at 9. It is respectfully submitted that these conclusions contravene settled rules of construction and leads the Commission to the wrong result.

. . . The class specs are unambiguous in including all activities related to "[e]nforcing laws, rules and regulations." Resp. Ex. 1. Thus, the Commission should apply the class specs as written as the best indicia of DER's intent, rather than relying upon extrinsic explanations of intent by Troy Hamblin after the fact. If the Commission is true to the principle that it is bound by the terms of the class specs, it must accept the broadly inclusive language used by DER in these particular specs. (citation omitted) All activities related to "[e]nforcing laws, rules and regulations" (Resp. Ex. 1) constitute actual law enforcement under the specs, and they must be implemented as written. Yet the Commission has excluded a large variety of these activities from actual law enforcement in its proposed decision.

One problem with appellants' above-noted argument is that it acknowledges that the Commission's comments were related to the Class Spec definition of actual LE activities, yet the appellants base their contradicting arguments on the phrase "enforcing laws, rules and regulations", which is just the second of 17 activities listed in the Class Spec definition of actual LE activities.

The more serious problem with appellants' argument is that it reads into the second factor the phrase "all activities related to" enforcing laws, rules and regulations. The plain language used in the Class Spec indicates that actual LE activities are defined to include "enforcing laws, rules and regulations". Each appellant's enforcement of laws, rules and regulations is credited in the PDO. Appellants do not specifically state which activities they felt the PDO failed to include if the words "all activities related to" were inserted in the second factor which makes it difficult for the Commission to formulate a more detailed response. Suffice it to say here that the second factor in the Class Spec does not state inclusion of "all activities related to" enforcing laws, rules and regulations and, accordingly, is insufficient to

include maintenance activities such as repairing a squad car, installing fences, posting signs, etc.; or the administrative duties related to maintenance such as keeping reports on vehicle maintenance.

The appellants' argument quoted above incorrectly contends that the examiner relied upon extrinsic evidence to achieve a narrow reading of the second factor of the Class Spec definition of actual LE activities. As noted above, such narrow reading was based upon the Class Spec language itself. The examiner resorted to extrinsic evidence, to wit: Troy Hamblin's testimony regarding the intent of the Class Spec; only to determine if the extrinsic evidence would support the broader reading of the Class Spec language urged by appellants. The Commission agrees with the examiner's conclusion that it does not.

Appellants also argue as noted below (p. 3, Appellants' Brief):

Second, in the event of any ambiguity, the Commission is bound to attempt to harmonize the class specs with DNR policy. . . (Citations omitted.)

In other words, appellants argue that the Commission must read into the Class Specs the DNR's definition of LE work used for time keeping. Such argument was rejected by the hearing examiner and is rejected by the full Commission as being defective in many ways, three of which are discussed here. One defect is there is no record evidence that the Department of Employment Relations (DER) intended to create a Class Spec with the same definition for LE work as used by DNR for timekeeping purposes. A second defect is it is impossible that the Class Spec somehow intended to include DNR's timekeeping definitions which did not exist at the time the Class Spec was written. Another defect is there is no legal relationship between the Class Spec and DNR's timekeeping system. The Secretary of DER has the statutory responsibility to develop classifications, pursuant to s. 230.09, Stats., and the factors stated therein. The DNR timekeeping system is developed by DNR (not by DER) and is not governed by Ch. 230, Stats., nor is DNR's timekeeping system a factor listed in s. 230.09, Stats., for DER to consider when developing classification levels. Furthermore, neither the Class Spec nor DNR timekeeping definitions for LE work have the force and effect of any statute or administrative rule.

Appellants argue that the DNR timekeeping definitions should be used to interpret the Class Spec on equitable grounds. (pp. 4-5, Appellants' Brief) Specifically, appellants note that Troy Hamblin "conceded" at hearing that he relied

upon DNR's timekeeping definitions to make his initial classification decisions under the Class Spec. This argument is incorrect and misleading. Mr. Hamblin testified that he made the initial classification decision based on each park ranger's PD. Resort to time sheets occurred sometime thereafter. Specifically, Mr. Hamblin contacted DNR to obtain a summary of each ranger's time records for fiscal year 1993-94, to verify some rangers' contentions that the time sheets would establish a higher rate of LE work than reflected in their PDs. He then compared the PD time percentages for LE work with the time sheet summary compiled by DNR (Exh. A-81). He found that most PDs did not differ drastically in the percent of LE work listed from the percentages listed on the DNR compilation. Where a discrepancy existed, he called the pertinent supervisor and requested an explanation which lead to a rewriting of PDs in appropriate situations where the PD failed to reflect the higher amount of LE work performed. Based on the foregoing, appellants' equity argument lacks merit. Furthermore, the Commission previously has held that equitable considerations do not prevail over the Class Spec requirements (*see, e.g., Domel v. DER, 94-0146-PC, 5/18/95*); rather, the Class Spec requirements are binding (*see, e.g., Edwards v. DER, 92-0423-PC, 11/29/93, and Zhe et al. v. DHSS & DP, 80-285, 286, 292, 296-PC, 11/18/81, aff'd by Dane County Circuit Court, Zhe et al. v. Pers. Comm, 81-CV-6492, 11/82*).

Appellants contend that the PDO "fails to consider comparable positions". (pp. 5-6 of Appellants' Brief). It is true that comparable positions are not discussed in the PDO, but they were considered by the hearing examiner in reaching her decision. A discussion of those positions follows.

Appellants' statement regarding witness Steven J. Thomas is incorrect and misleading. The excerpt below is from Appellants' Brief, p. 5:

. . . At the hearing the Rangers relied upon testimony of Steve Thomas, and his position description (App. Ex. 44), to demonstrate that Rangers with less than 60% actual law enforcement on their position descriptions were nonetheless made Ranger 2's by DER.

Mr. Thomas testified that his position was reallocated to the Ranger 1 level, a decision over which he filed an appeal. According to Mr. Thomas, he informed DER that specific events had occurred on his job which he coded for DNR timekeeping purposes as work other than LE work, but that such events met the definition of actual LE activities in the Class Spec. He also opined that even without including the special events, he worked 60% of his time performing actual LE activities when corrections were made for duties which he coded as non-LE work on his DNR time sheets.

Ultimately, he persuaded DER that an adjustment for these factors would result in his position performing actual LE activities for at least 60% of his position's time. His appeal was settled thereafter.

Appellants also contend that PDs of other ranger positions support their contention that DER classified some positions at the two level even though actual LE activities were performed for less than 60% of the position's time. (Appellant's Brief, pp. 5-6) This contention is incorrect.

DER used Ms. Hopper's PD (Exh. A-33) to determine that the position spent less than 60% of the time performing actual LE activities and, accordingly, the position was reallocated to the Ranger 1 level. Ms. Hopper felt she performed actual LE activities for more than 60% of her time. She had her PD officially revised to show performance of actual LE activities for 66% of the time. DER reallocated her to the Ranger 2 level based upon her contentions as verified by the revised official PD.

DER classified the Morgan position at the Ranger 2 level based on Ms. Morgan's PD. (Exh. A-31) While it is true that section A of the Morgan PD details most of the position's actual LE activities amounting to 57%, Mr. Hamblin credited actual LE activities in other sections of the PD which lead him to conclude that the Morgan position met the 60% cutoff.

The position occupied by Kurt Dreger was reallocated to the Ranger 2 level based on his PD. Specifically, Mr. Hamblin determined that actual LE activities met the 60% cutoff using Goals A and C of the PD (50%), and part of Goal B (20%) in which it appears that half of the tasks meet the Class Spec definition resulting in a conclusion that 60% of the Dreger position's time was spent performing actual LE activities. Mr. Hamblin noted that his conclusion was supported by DNR's compilation (Exh. A-81) which shows the position performing LE work for 61% of the position's time.

The position held by Chad Slaby was reallocated to the Ranger 2 level based on his PD. Mr. Hamblin testified that he included as actual LE activities Goals A and B of the Slaby PD (58% of the position's time), as well as parts of Goal C (such as C3 "collect and process evidence"). He also noted that DNR's compilation showed Mr. Slaby performing LE work for 69% of his time. In short, Mr. Hamblin was persuaded that the Slaby position met the 60% cutoff required in the Class Spec.

Mr. Hamblin's explanation for the Ranger 2 reallocation of John Hasse's position was less clear than for the other comparable positions discussed above. However, the examiner concluded from Mr. Hamblin's testimony that he attempted to



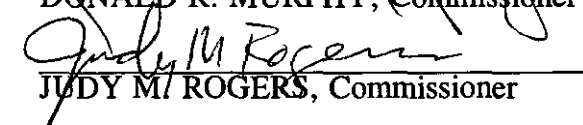
review all PDs under the same set of criteria and to place the positions at the Ranger 2 level which he felt met the 60% cutoff. Even if he erred in his analysis of Mr. Hasse's position, the Commission cannot compound the potential error by placing the appellants at the Ranger 2 level even though their positions do not meet the 60% cutoff in the Class Spec. See, for e.g., *Lulling & Arneson v. DER*, 88-0136, 0137-PC, 9/13/89; and *Augustine & Brown v. DATCP & DER*, 84-0036, 0037-PC, 9/12/84.

ORDER

The PDO is adopted as the Commission's final decision, as supplemented by the discussion in this document.

Dated: February 10, 1997.

STATE PERSONNEL COMMISSION


LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JUDY M. ROGERS, Commissioner

JMR
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NOTICE

OF RIGHT OF PARTIES TO PETITION FOR REHEARING AND JUDICIAL REVIEW OF AN ADVERSE DECISION BY THE PERSONNEL COMMISSION

Petition for Rehearing. Any person aggrieved by a final order (except an order arising from an arbitration conducted pursuant to §230.44(4)(bm), Wis. Stats.) may, within 20 days after service of the order, file a written petition with the Commission for rehearing. Unless the Commission's order was served personally, service occurred on the date of mailing as set forth in the attached affidavit of mailing. The petition for rehearing must specify the grounds for the relief sought and supporting authorities. Copies shall be served on all parties of record. See §227.49, Wis. Stats., for procedural details regarding petitions for rehearing.

Petition for Judicial Review. Any person aggrieved by a decision is entitled to judicial review thereof. The petition for judicial review must be filed in the appropriate circuit court as provided in §227.53(1)(a)3, Wis. Stats., and a copy of the petition must be served on the Commission pursuant to §227.53(1)(a)1, Wis. Stats. The petition must identify the Wisconsin Personnel Commission as respondent. The petition for judicial review must be served and filed within 30 days after the service of the commission's decision except that if a

rehearing is requested, any party desiring judicial review must serve and file a petition for review within 30 days after the service of the Commission's order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. Unless the Commission's decision was served personally, service of the decision occurred on the date of mailing as set forth in the attached affidavit of mailing. Not later than 30 days after the petition has been filed in circuit court, the petitioner must also serve a copy of the petition on all parties who appeared in the proceeding before the Commission (who are identified immediately above as "parties") or upon the party's attorney of record. See §227.53, Wis. Stats., for procedural details regarding petitions for judicial review.

It is the responsibility of the petitioning party to arrange for the preparation of the necessary legal documents because neither the commission nor its staff may assist in such preparation.

Pursuant to 1993 Wis. Act 16, effective August 12, 1993, there are certain additional procedures which apply if the Commission's decision is rendered in an appeal of a classification-related decision made by the Secretary of the Department of Employment Relations (DER) or delegated by DER to another agency. The additional procedures for such decisions are as follows:

1. If the Commission's decision was issued after a contested case hearing, the Commission has 90 days after receipt of notice that a petition for judicial review has been filed in which to issue written findings of fact and conclusions of law. (§3020, 1993 Wis. Act 16, creating §227.47(2), Wis. Stats.)

2. The record of the hearing or arbitration before the Commission is transcribed at the expense of the party petitioning for judicial review. (§3012, 1993 Wis. Act 16, amending §227.44(8), Wis. Stats.)

2/3/95

STATE OF WISCONSIN

PERSONNEL COMMISSION

RICHARD J. OSTROWSKI,

Appellant,

v.

Secretary, DEPARTMENT OF EMPLOYMENT
RELATIONS,

Respondent.

Case No. 95-0049-PC

PROPOSED DECISION & ORDER

A hearing was held in this matter on April 11-12, 1996, and June 17, 1996.¹ The parties requested and were provided an opportunity to file written arguments, with the final submission received by the Commission on October 4, 1996.

The hearing issue was agreed to by the parties, as shown below. (See Commission letter dated February 6, 1995.)

Whether respondent's decision to reallocate the appellant's position to Ranger 1, rather than Ranger 2 was correct.

The Department of Employment Relations (DER) undertook a survey of law enforcement (LE) and related positions. The purpose of the survey was to improve recruitment and retention problems with police and state trooper positions. Park ranger positions were included in the survey because DER included all positions which were required to have LE credentials and which had arrest authority. Mr. Ostrowski's position was reallocated to Ranger 1, effective January 22, 1995.

The classification specification (Class Spec) for Ranger positions is in the record as Resp. Exh. 1. Two classification levels were created as shown below (with emphasis as it appears in the original document):

RANGER 1: Positions at this level have responsibility for performing actual LE activities in state parks, forests and recreation properties within the DNR for less than 60% of the assigned duties. Additional responsibilities of these positions may include a wide variety of maintenance & development activities, serving as the Assistant to the Park Manager within the property, and performing related administrative duties. Positions at this level function under the general direction of a Park Manager.

¹ This appeal was combined for hearing with the following appeals: Foss v. DER, 95-0048-PC, Nordstrom v. DER, 95-0061-PC, Olson v. DER, 95-0062-PC and Lane v. DER, 95-0064-PC. Appellants requested that the examiner issue a separate decision for each appeal.

RANGER 2: Positions at this level are responsible for performing actual LE activities within the assigned State Park, Forest or Recreational Area for at least 60% of the position's time. These positions function primarily within the Department's largest parks and State Forests. Additional responsibilities of these positions may include a wide variety of maintenance and development activities, serving as the Assistant to the Park Manager within the property, and performing related administrative duties. Positions at this level function under the general direction of a Park Manager.

The Class Spec defines LE activities as shown with the format changed to add a numbering system for each factor mentioned, as a reference aid in subsequent paragraphs. The emphasis shown is the same as in the original document.

For the purpose of classifying positions within this series, actual law enforcement activities are defined as follows:

1. Random patrols on state land and water.
2. Enforcing laws, rules and regulations.
3. Issuing verbal and written warnings and/or citations to visitors to achieve compliance with laws and regulations.
4. Responding to LE related complaints.
5. Directing the activities of permanent and limited term employment (LTE) LE personnel.
6. Seizing, holding and disposing of evidence for court.
7. Testifying in court.
8. Checking licenses, tags, permits and registrations.
9. Reviewing citations for completeness & accuracy.
10. Developing reports related to LE activities within the park/forest.
11. Conducting investigations of accidents, fires and incidents on state lands.
12. Acting as Court Officer.
13. Monitoring chain of evidence for all items seized and conducting proper disposition of items.
14. Attending and presenting LE training.
15. Serving as a district armorer.
16. Providing LE assistance to LE officers outside of normal park/forest LE duties.
17. Working with Conservation Wardens.

Mr. Ostrowski works for the Department of Natural Resources (DNR Whitefish Dunes State Park. The position description (PD) for his job is in the record as Resp. Exh. 2c, and is summarized below. Tasks which both parties agree meet the Class Spec definition of actual LE activities are denoted in bold type as "undisputed," while disputed tasks bear a contrary notation.

<u>Time %</u>	<u>Goals and Worker Activities</u>
25%	<p><u>A. Performance of Administrative Duties..</u></p> <p>A1. Assume duties of park superintendent in his absence to insure continued park operation.</p> <p>A2. Assist in the development of long range work plans to insure accomplishment of objectives.</p> <p>A3. Recommend changes in park operations to insure efficient use of personnel time & materials & improve visitor relations.</p> <p>A4. Assist in the recruitment, training & evaluation of employees to assure competent staffing. Disputed.</p> <p>A5. Complete special reports to supply data for research.</p> <p>A6. Recommend changes in administrative code to streamline operations & improve services.</p> <p>A7. Inspect all park facilities & take action to alleviate hazardous conditions to insure visitor and employee safety.</p> <p>A8. Assign park stickers to accurately insure employee accountability.</p> <p>A9. Accept employee remittances & maintain respective accounting to accurately record revenue producing activities.</p> <p>A10. Prepare property remittances to comply with directives & insure accountability & timely submission of revenue.</p> <p>A11. Assist in the annual & biannual budget request.</p> <p>A12. Assist in preparing & recommend development & improvement projects to improve services & alleviate operational problems.</p> <p>A13. Order supplies as needed for stickers sales, LE & maintenance programs. Disputed.</p> <p>A14. Direct limited term employees (LTE) to insure adequate quantity & quality of work. Disputed.</p> <p>A15. Do monthly & other reports as goals & worker activities determined by the park superintendent. Disputed.</p> <p>A16. Participate in community related programs as they present themselves.</p> <p>A17. Participate in dept. safety programs as needed. Disputed.</p> <p>A18. Coordinate hazard communication program for Whitefish Dunes State Park.</p> <p>A19. Answer complaint letters for superintendent's signature.</p>
55%	<p><u>B. Performance of Visitor Services and Protection Activities.</u></p> <p>B1. Serve as lead worker in all visitor services & protection at Whitefish Dunes State Park to insure cooperation of all personnel. Undisputed.</p> <p>B2. Possess & retain driver license to operate park vehicles. Undisputed.</p>

- B3. Possess & retain LE credentials required to perform assigned duties. **Undisputed.**
- B4. Enforce Wis. administrative codes & statutes to protect visitors & resources & to minimize user conflicts. **Undisputed.**
- B5. Patrol Whitefish Dunes on foot & vehicle to locate problem individuals, investigate complaints & incidents to achieve compliance with the law. Resolve problems by taking appropriate action as well as promoting positive rapport with visitors. **Undisputed.**
- B6. Issue verbal or written warnings and/or citations to park users for violations to insure protection of visitors & resources & minimize conflicts. **Undisputed.**
- B7. Organize & conduct search & rescue operations & provide basic first aid to injured visitors & assist those in distress. **Undisputed.**
- B8. Check building & premise security to maintain physical integrity of the park & prevent vandalism. **Undisputed.**
- B9. Recover stolen & lost property & return it to the owners. **Undisputed.**
- B10. Prepare citations for processing through court system to insure prompt disposition of cases. **Undisputed.**
- B11. Serve as court officer when necessary. **Undisputed.**
- B12. Maintain LE records systems to provide requested data & inform superintendent of specifics in regard to the LE effort. **Undisputed.**
- B13. Maintain incident report file for all citations issued & for all unusual occurrences to provide history of goals & worker activities specific cases (sic). **Undisputed.**
- B14. Conduct background investigations of applicants to determine suitability for LE duties. **Disputed.**
- B15. Coordinate enrollment of LTE officers in appropriate phase training to insure continued training as required by LE Standards Board and dept. directives. **Disputed.**
- B16. Process applications for credential issuance to insure a timely receipt of credentials for seasonal needs. **Disputed.**
- B17. Develop, maintain & update property level policies & procedures statement to promote employee awareness of expected duties & standards relative to the public contact & enforcement program. **Disputed.**
- B18. Secure, mark & hold evidence for court use. **Disputed.**
- B19. Testify in cases which go to trial as the state's witness. **Disputed.**

- B20. Handle the park's vehicle sticker notice program which involves recording violation notices, filing notices & follow-up correspondence. **Disputed.**
- B21. Train & advise other park personnel in LE procedures & changes in laws & guidelines related to dept. policy. **Disputed.**
- B22. Serve as Smith & Wesson Armorer of semi-automatic pistols for Lake Michigan dist. parks program. **Disputed.**
- B23. Patrol of state owned lands during hunting, fishing, and trapping seasons & awareness of violations while carrying out routine park functions. **Disputed.**

15%

C. Performance of Maintenance Activities.

- C1. Assist in identifying short & long term maintenance with respective estimates to provide data needed for judging request & work planning.
- C2. Maintain trails to prevent resource deterioration & insure visitor direction & safety. **Disputed.**
- C3. Pick up litter & other debris to maintain park appearance at a high level.
- C4. Take & process drinking water samples per established guidelines to assure the health & safety of visitors & employees.
- C5. Perform minor repairs on roads & parking lots to prevent damaging wear & costly repair.
- C6. Post property boundaries to comply with dept. directives. **Disputed.**
- C7. Repair electrical & plumbing systems to insure timely resumption of services.
- C8. Maintain all signs to facilitate enforcement, regulatory, directional & information efforts. **Disputed.**
- C9. Repair & modify park vehicles & equipment to accommodate seasonal changes in workload. **Disputed.**
- C10. Maintain picnic areas to prevent resource deterioration & provide safe recreational opportunities. **Disputed.**
- C11. Perform maintenance on buildings, grounds equipment & facilities insure compliance with dept. standards.
- C12. Apply herbicides to selected areas.
- C13. Repair or replace boardwalk to keep area safe.
- C14. Repair & perform maintenance on vehicles & equipment to insure longevity & safe operations.
- C15. Direct work crews in the day to day park operation related to maintenance needs.

5%

D. Performance of Public Contact Duties

- D1. Sell admission stickers & approved publications. Disseminate information to park users, promote visitor awareness of park rules & regulations as well as respective recreational opportunities. **Disputed.**

- D2. Accept comments & investigate complaints from park user to promote an understanding of dept. programs & a resolution of conflicts. **Disputed.**
- D3. Respond to written & oral requests from the public to insure awareness of goals & worker activities recreational opportunities & dept. programs.
- D4. Promote visitor awareness & understanding of park rules & regulations to minimize negative contacts. **Disputed.**

Disputed Tasks

Mr. Ostrowski claimed PD tasks A4 (recruitment, etc.) and A14 (directing LTEs) as LE activities saying the LTEs perform LE work. His later testimony revealed that there are 3 LTE positions; one which performs maintenance, a second which performs public contact work, and a third which functions as an office worker. He was unable to persuade the Commission that the LTE positions performed assigned LE activities. Accordingly, PD tasks A4 and A14 do not meet the Class Spec definition of actual LE activities.

Task A13 (order supplies) does not meet the Class Spec definition of actual LE activities. While some of the supplies purchased may be used in performing LE work, purchasing is not included in the Class Spec definition. Mr. Ostrowski claimed that PD task A15 (monthly reports) is LE work because it includes a monthly mileage report on the truck he uses for LE activities, as well as on all park vehicles. This type of report concerns equipment maintenance and/or repairs as opposed to a report of LE activities (for example, a report of citations issued). Accordingly, PD task A15 does not meet the Class Spec definition of actual LE activities.

A portion of PD task A17 meets the Class Spec definition of actual LE activities. Mr. Ostrowski provides training on hunter and firearm safety, and related regulations. The portion of regulation training meets the Class Spec definition (factor #14).

Tasks B14 (background checks of LE hires), B15 (LE training requirements met), B16 (assuring timely receipt of LE credentials) and B21 (provide LE information to staff) all meet the Class Spec definition of actual LE activities (factors 5 and 14). Tasks B18 (court evidence) and B19 (court testimony) meet the Class Spec definition as well (factors 6, 7 and 13). Task B22 (district armorer) meets the Class Spec definition found in factor 15. Tasks B17 (park procedures) and B20 (sticker notice program) meet the Class Spec definition only in the portions pertaining to LE park procedures and to the violation portion of the sticker notice program. To the extent that task B23

(patrol) could result in observation of violations, such LE activity is specified elsewhere in the PD.

Tasks C2, C6, and C8 through C10 do not meet the Class Spec definition of actual LE activities. Mr. Ostrowski's claim that these tasks involve LE work was based upon accident prevention by, for example, removing fallen trees on the trail and replacing missing signs; and upon addressing violations if observed while performing the maintenance work. Maintenance tasks, however, are not included in the Class Spec definition of actual LE activities even if such work helps to prevent accidents. Also, addressing violations if observed while performing maintenance already is included under PD goal B.

Tasks D1(selling stickers) and D4 (promote visitor awareness) each refer to providing information to visitors. The portion of these activities which involve education on park regulations arguably is included in the Class Spec definition of actual LE activities (factor #14). Information regarding the remaining topics is not included in the Class Spec definition. Task D2 (accept comments/investigate complaints) does not meet the Class Spec definition of actual LE activities. Investigation of LE-related complaints already is included in PD task B5.

Time Mr. Ostrowski spends on actual LE activities.

Based on a review of the PD alone (as noted in the prior paragraphs) not more than 52% of Mr. Ostrowski's time is spent performing actual LE activities. (This includes about 1% for A-17, 50% for goal B and about 1% for tasks D1 and D4.) Mr. Ostrowski, however, claims that the time percentages in the PD are incorrect even though he signed the PD as accurate in relation to the duties and time percentages shown therein. He claims that at least 65% of his time is spent on actual LE activities.

Mr. Ostrowski testified that the correct percentages for the goals of his PD should have been listed as follows: 20% for goal A, 65% for goal B, 10% for goal C and 5% for goal D. Under this scenario, Mr. Ostrowski's position performs no more than 61% actual LE activities (less than 1% for Goal A, 59% for Goal B and 1% for Goal D). The Commission, however, does not find these estimates credible for reasons explained in the following paragraphs.

Also in the record are time sheets for Mr. Ostrowski's position (Resp. Exh. 5c), covering about an 18-month period from June 27, 1993 to January 7, 1995, which includes 40 two-week pay periods. The chart below shows for each of the pay periods: the total number of hours worked (not including time off work), the total training

hours, and the total hours coded as PRK 28. The training hours are shown for background information. Mr. Ostrowski did not indicate at hearing which portion of the training hours should be counted as LE training.

<u>Pay Pd. (PP)</u>	<u>Hrs. Wkd.</u>	<u>LE Hrs. Wkd.</u>	<u>Training Hrs.</u>	<u>PP start date</u>
1	80	42		06/27/93
2	80	30		07/11/93
3	78	25		07/25/93
4	72	38	3	08/08/93
5	80	29		08/22/93
6	78	12		09/05/93
7	72	4		09/19/93
8	76	9		10/03/93
9	70	10	8	10/17/93
10	61	3	4	10/31/93
11	46	26		11/14/93
12	67	8		11/28/93
13	64	21		12/12/93

subtotal for pay periods 1-13:
 $\frac{257 \text{ LE hours}}{924 \text{ total hours}} = 28\% \text{ LE work/total work}$

<u>Pay Period</u>	<u>Hrs. Wkd.</u>	<u>LE Hrs. Wkd.</u>	<u>Training Hrs.</u>	<u>PP start date</u>
14.	62	15	3	12/26/93
15.	72	6	40	01/09/94
16.	80	13	2	01/23/94
17.	80	24	13	02/06/94
18.	80	21	15	02/20/94
19.	34	9	12	03/06/94
20.	76	27	8	03/20/94
21.	80	17		04/03/94
22.	72	13		04/17/94
23.	72	21	3	05/01/94
24.	80	15	48	05/15/94
25.	80	39	8	05/29/94
26.	49	23	1	06/12/94

subtotal for pay period 14-26:
 $\frac{243 \text{ LE hours}}{917 \text{ total hours}} = 26\% \text{ LE work/total work}$

Year subtotal for pay periods 1-26:
 $\frac{500 \text{ LE hours}}{1841 \text{ total hours}} = 27\% \text{ LE work}$

<u>Pay Period</u>	<u>Hrs. Wkd.</u>	<u>LE Hrs. Wkd.</u>	<u>Training Hrs.</u>	<u>PP start date</u>
27.	80	48		06/26/94
28.	80	35	4	07/10/94
29.	76	31		07/24/94
30.	40	16		08/07/94

31.	80	28		08/21/94
32.	79	28		09/04/94
33.	72	3		09/18/94
34.	76	17		10/02/94
35.	61	8	22	10/16/94
36.	62	7		10/30/94
37.	50			11/13/94
38.	69			11/27/94
39.	47	14	1	12/11/94
40.	48	2	32	12/25/94

subtotal for pay periods 27-40:
 $\frac{237 \text{ LE hours}}{920 \text{ total hours}} = 26\% \text{ LE work}$

TOTAL for pay periods 1-40:
 $\frac{737 \text{ LE hours}}{2761 \text{ total hours}} = 27\% \text{ LE work}$

The information summarized above from Mr. Ostrowski's time sheets which he signs as accurate when submitted do not support his contention that at least 60% of his time is spent performing LE work. The time sheets do not support the higher LE percentages noted in the signed PD.

Mr. Ostrowski's opinion that he performs LE work at least 60% of his time would be deemed credible by the Commission only if the Class Spec definition of actual LE activities were the same as the concept of LE work which DNR uses for timekeeping purposes (App. Exh. 4). DNR's concept definition is shown below:

Direct LE: Includes making contacts, giving warnings, courtesy sticker notices, issuing citations, making arrests, processing warrants, patrolling, conducting investigations. The LE duties would cover regulations relating to: boating, fishing, hunting, trapping, snowmobiling, environmental protection, archaeology rules, traffic control, alcohol and drugs, juvenile offenses, personal behavior, administrative codes, fire control regulations, etc.

Preventive LE: Includes visitor safety and educational programs, hunter safety, boating safety, ATV safety, user ethic programs, crime prevention programs, providing general information while in an enforcement uniform, providing information about rules and regulations prior to an official warning, providing visitors assistance with vehicles, delivering messages, looking for lost persons, rendering first aid, providing emergency information/warnings, etc.

LE Administration: Includes LE report writing, incident/accident/complaint reports, supervision of LE staff, interviewing and recruiting for LE staff, performance and background checks, meetings relating to LE, court duties/appearances, revenue deposits, etc.

LE Training: Includes basic recruit training, enforcement recertification training, firearms training, CPR, first aid training, on-property LE instruction and orientation training of property staff, specialized LE training and instruction, training related to rules and regulations, etc.

LE Equipment Maintenance: Includes maintenance of firearms and other personal LE equipment, radios, light bars, sirens and speaker systems and similar equipment directly related to the LE program.

The duties included by DNR for timekeeping purposes is broader than the definition of actual LE activities in the Class Spec. Some duties are included in both documents, such as issuing citations and attending LE recertification training. However, the DNR definition goes further with its inclusion (for example) of providing vehicle assistance to park visitors, delivering messages, maintaining equipment used by Rangers, as well as dissemination of any type of information to visitors as long as the Ranger is in uniform. If being in uniform were the determinative factor, there would be no need for more than one ranger classification level as individuals at both the Ranger 1 and 2 levels wear the same type of uniform. To the extent that differences exist between the Class Spec and DNR's definition of LE work, the Class Spec controls for classification purposes.

OPINION

The burden of proof in a reallocation case is on the appellant to show that he should be reallocated as requested, Vranes v. DER, 83-0122-PC (7/19/84), and the appellant must establish the requisite facts by a preponderance of the evidence, Tiser v. DNR & DER, 83-0217-PC (10/10/84). The key determination is whether the appellant's responsibilities are better described at the lower or higher classification level. Stensberg, et al. V. DER, 92-0325-PC, etc. (2/20/95).

The main distinction between Ranger 1 and Ranger 2 in the Class Spec, is the percent of time which the position spends performing actual LE activities, as that term is defined in the Class Spec. The Ranger 2 level requires that at least 60% of a position's time be spent performing actual LE activities, a requirement which Mr. Ostrowski has not established as true for his position.²

² While appellant is correct that the Commission hears these appeals on a de novo basis, the Commission is not required to accept hearing testimony which is unpersuasive. Specifically, the appellant testified that at least 60% of his time was spent performing LE work, but such testimony was contrary to documents which he had signed as true (his PD and time sheets) and he failed to provide a persuasive explanation for the discrepancy.

The appellant recognized in his reply brief (pp. 3-4), that the Commission lacks the authority to rewrite the Class Spec and, accordingly, must apply the Class Spec as written. Zhe, et al. V. Pers. Comm., 81-CV-6492 (11/82). He requests, however, that the Commission adopt DNR's timekeeping definition of LE work. Specifically, he notes that the second factor in the Class Spec definition of actual LE activities includes: "*Enforcing* laws, rules and regulations." (Emphasis added.) Appellant urges the Commission to interpret the word "*Enforcing*" to include DNR's broader definition. His argument is shown below with emphasis as it appears in the original document.

. . . [T]he Commission will be forced to address the question of what the term 'enforcing' includes. It can adopt DER's cramped position, which appears to leave little more than actual arrests and formal citations in the concept of actual law enforcement. This position was created by Troy Hamblin, who has never worked either as a Ranger or other law enforcement officer. Hamblin Cross. Or it can adopt the position of the DNR, an actual law enforcement agency with experience in the field, which states:

the lowest level of corrective action that will effectively handle the situation shall be used. Again, the goal is to prevent, through assistance and information, violations.

App. Exh. 11, at 2 (emphasis added). To the extent that Ripp v. DER, 95-0047-PC, disregards the broader concept of preventative law enforcement, it should be reconsidered by the Commission.

A major difficulty with the appellant's above-noted argument is the record supports the conclusion that DER intended the narrower definition. As noted previously, the mere wearing of a uniform while disseminating any type of information could not have been contemplated under the Class Spec because all rangers wear the same uniform. Furthermore, the survey was initiated to improve recruitment and retention problems with police and state troopers. Ranger positions were part of the survey because of the requirement to have LE credentials and because of the related arrest authority. There is no persuasive indication in the record that the survey intended to measure these positions by factors other than duties directly related to arrest and citation powers, which was identified by DER as the common thread between the ranger, police and state trooper positions.

ORDER

Respondent's decision to reallocate Mr. Ostrowski's position at the Ranger 1 level is affirmed and this appeal is dismissed.

Dated: _____, 1996. STATE PERSONNEL COMMISSION

LAURIE R. McCALLUM, Chairperson

DONALD R. MURPHY, Commissioner

JMR
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JUDY M. ROGERS, Commissioner

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